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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/070,799

09/16/2002

Linda A. Young

112701-338

9555

29157 7590 03/15/2007  
BELL, BOYD & LLOYD LLP  
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CHICAGO, IL 60690

EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1615

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/15/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/070,799	YOUNG ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	NEIL LEVY	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 6, 8, 10, 12, 13, 15-17, 19-24 and 30-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 6, 8, 10, 12, 13, 15-17, 19-24, 30-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 4, 6, 8, 10, 12, 13, 15-17, 19-24, & 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over SHIELDS et al 6156355 in view of CAVADIN et al EPO862863 or MARSH et al WO98/5263.

SHIELDS, of record provides the instant benefits to skin and coats of pets in need thereof (Examples 5, 6) at the instant concentration of omega 3 and 6 fatty acids (1-5%), inulin (0.5-10%) and feeds the fatty acids, prebiotics, chicory, zinc and probiotics. The amounts of prebiotics are not specified.

CAVADIN (page 5, lines 22-26, and 54-57) shows how much is added to pet food; so does MARSH (page 16) of the unspecified instant probiotic-Brewer's yeast at 1.7%.

It would have been obvious at the time of the instant invention for one of ordinary skill in the canine feed arts to incorporate these ingredients of known efficacy with known diets at levels chosen to optimize desired parameters of performance. It would be within the purview of one in the pet arts to find it obvious to apply the desired amounts and proportions nutrient and dietary aids to optimize desired effects. Further, no objective showing of non-obvious or unexpected results is shown by the applicant to distinguish over the prior art use of the particular ingredients.

Claims 1, 4, 6, 8, 10, 12, 13, 15-17, 19-24, 30-33 stand rejected under 35 U.S.C. 103(a) as being unpatentable over LOWE '88 in view of Marsh-WO 98/56263 & Shields & LAB DIET '98, Matsuura et al 5756088 & Cavadini et al EP 0862863.

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Applicant's arguments filed 12/12/06 have been fully considered but they are not persuasive.

Applicant argues prior art fails to show the instant methods of maintaining or enhancing healthy skin function. However, the prior art as cited feeds non-specified prebiotics, probiotics, and fatty acids to the same animals as applicant's, thus would find the same effects. SHIELDS repeatedly recites maintaining healthy skin and coat, with omega 3 and 6 fatty acids, chicory root, and inulin sources, zinc and probiotic lactobacilli feed as Example 5.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619.

The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

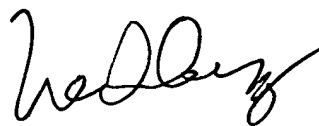
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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A handwritten signature in black ink, appearing to read "Neil Levy", with a stylized flourish at the end.

NEIL LEVY  
Primary Examiner  
Art Unit 1615